

EXHIBIT 9

REDACTED

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
Civil No. 1:17-cv-02246

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DOROTHY FORTH, LISA BULLARD, RICARDO GONZALES, CYNTHIA RUSSO, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 38 HEALTH AND WELFARE FUND, INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 295-295C WELFARE FUND, AND STEAMFITTERS FUND LOCAL 439, On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

- against -

WALGREEN CO.,

Defendant.

-----X

September 30, 2020

8 : 3 4 a . m .

*** HIGHLY CONFIDENTIAL ***

*** ATTORNEYS' EYES ONLY ***

Virtual Videotaped 30(b)(6)
Deposition of CHRISTY PITI, taken by
Defendants, pursuant to Notice, before
Sharon Pearce, RMR, CRR, CRC, NYRCR, a
Registered Merit Reporter, Certified
Realtime Reporter, and Notary Public of
the State of New York.

* * *

1 PITI - HIGHLY CONFIDENTIAL - AEO

2 MS. LENCIONI: Objection to
3 form.

4 Q. I'm sorry. Sav-Rx followed
5 industry events. Is that fair to say?

6 A. In general, yes.

7 Q. And what is Sav-Rx's
8 understanding for how Walmart's \$4 generic
9 program works?

10 MR. ALEXANDER: Objection to
11 form.

12 A. Walmart has a -- had initially a
13 list of only \$4 drugs. They subsequently
14 added on larger supplies for differing
15 amounts, I think a \$10 and the like. But
16 the general substance of the program is
17 they had a published list of medications
18 that they would charge \$4 for everyone.

19 Q. And when you say "for everyone,"
20 what do you mean?

21 A. It was not a club or that
22 somebody had to sign up for or they didn't
23 have to ask for the \$4. They didn't have
24 to pay to be entitled for the \$4. They
25 didn't have to show a cash discount card

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2 to get the \$4. It was the price when you
3 walked into a Walmart.

4 Q. So anybody who walked into
5 Walmart for that prescription was entitled
6 to that price.

7 A. Yes.

8 Q. And would that make it their
9 retail price, then?

10 A. Yes. That was their retail cash
11 price.

12 Q. Is Sav-Rx familiar with
13 Walgreens' Prescription Savings Club?

14 A. Yes.

15 Q. And if I call it PSC, will you
16 understand that I'm referring to the
17 Prescription Savings Club?

18 A. Yes.

19 Q. When did Sav-Rx learn -- well,
20 I'll go back.

21 I'll represent to you that
22 Walgreens started a pilot program for the
23 PSC in 2006 and launched nationally in
24 August of 2008.

25 With that in mind, do you know

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2 Q. Well, I'll strike the question.

3 So if you could -- in a little
4 bit more laymen's terms, what does retail
5 price mean, if you can --

6 A. Retail price of a prescription
7 is what a person paying cash would pay to
8 the pharmacy.

9 Q. And what is a person paying
10 cash? Who is that?

11 A. A person who does not have a
12 drug card.

13 Q. And what do you mean by a drug
14 card?

15 A. A person for which a claim would
16 not be adjudicated to a prescription
17 benefit manager to determine the price.

18 Q. Somebody who has insurance,
19 would that be a cash customer?

20 A. No.

21 Q. And somebody who uses a discount
22 card in which it's adjudicated through a
23 PBM, would that be a cash customer?

24 A. No.

25 Q. Has Sav-Rx's understanding of

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2 what the term retail price means changed
3 between the time it entered into the 1999
4 Walgreens agreement and today?

5 A. The Sav-Rx -- did you call it an
6 idea?

7 Q. No. My question is has Sav-Rx's
8 understanding -- let's strike that.

9 You just testified as to what
10 Sav-Rx's understanding of the term retail
11 price was when it entered into the 1999
12 Walgreens agreement; correct?

13 A. Yes.

14 Q. Has Sav-Rx's understanding of
15 what the term retail price means changed
16 between the time it executed the 1999
17 Walgreens agreement and today?

18 A. The understanding of the words
19 in this contract for usual and customary
20 has not changed. There have been verbiage
21 changes in explaining what that
22 understanding is.

23 Q. So I understand that we'll be
24 looking at a later agreement between
25 Walgreens and Sav-Rx. I'm not talking

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2 about that. I'm just talking about the
3 meaning of the term retail price.

4 Has that changed at all --
5 Sav-Rx's understanding changed at all
6 between 1999 and today?

7 A. The meaning of retail price in
8 this document relating to usual and
9 customary has not changed for Sav-Rx since
10 1999 to the present.

11 Q. At the time it entered into the
12 1999 Walgreens agreement, did Sav-Rx
13 believe that the term retail price was
14 well understood by pharmacies?

15 MR. ALEXANDER: Objection to
16 form.

17 MS. LENCIONI: And I'll just
18 object again. She's only been
19 designated to testify with regard to
20 Sav-Rx.

21 MR. LEIB: And in this question,
22 I'm just asking did Sav-Rx believe at
23 the time it entered into the 1999
24 Walgreens agreement that the term
25 retail price was well understood by

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2 "public."

3 A. Yes.

4 Q. Do you know -- well, I think we
5 already talked about this. So in 1999,
6 Walmart's \$4 generic program had not yet
7 been introduced, and neither had
8 Walgreens' PSC.

9 You remember we talked about
10 that, the dates that those were
11 introduced; correct?

12 A. Yes.

13 Q. When Sav-Rx first learned about
14 the PSC, did Sav-Rx have a view as to
15 whether the PSC price was the retail price
16 charged to the public?

17 A. Did you ask me -- ask me the
18 question again.

19 Q. I just asked you whether -- it's
20 really a yes-or-no question on this one.

21 When Sav-Rx first learned about
22 the PSC, did Sav-Rx have a view as to
23 whether the PSC was a retail price charged
24 to the public?

25 A. It was our view that PSC was not

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2 a retail price charged to the public.

3 Q. And what was the basis for that
4 view?

5 A. The PSC was an adjudicated cash
6 discount card and not a usual and
7 customary price.

8 Q. And why was it not the usual and
9 customary price?

10 A. A usual and customary price is a
11 retail price charged to a cash-paying
12 customer that is not adjudicated to a
13 prescription benefit manager or -- well,
14 and -- I'm just going to end it there.
15 It's not adjudicated to a prescription
16 benefit manager.

17 Q. And when it learned about the
18 PSC, did Sav-Rx have an understanding as
19 to whether the PSC was adjudicated by a
20 prescription benefit manager?

21 A. Sav-Rx was under the
22 understanding that the PSC was adjudicated
23 to a prescription benefit manager.

24 Q. And did -- when it first learned
25 about the PSC, did Sav-Rx have a view as

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2 to whether the PSC was a retail price
3 charged to the public?

4 MR. ALEXANDER: Objection to
5 form.

6 A. Sav-Rx --

7 Q. Sorry. That was not a
8 well-phrased question. So I am going to
9 rephrase.

10 At the time it first learned
11 about the PSC, did Sav-Rx have a view as
12 to whether the PSC prices were retail
13 prices charged to the public?

14 MR. ALEXANDER: Objection to
15 form.

16 A. Sav-Rx did not believe that the
17 PSC was -- were retail prices charged to
18 the public.

19 Q. And did -- at the time it first
20 learned about the PSC, did Sav-Rx have a
21 view as to whether the PSC was offered --
22 the PSC prices were offered to anyone who
23 walked in off the street?

24 A. The PSC pricing was not offered
25 to anyone who walked in off the street.

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2 applied at the pharmacy level to everyone
3 that walked into a Walmart pharmacy, and
4 that claim was not adjudicated to a third
5 party or on a third-party platform to
6 determine what the price would be.

■ ■ ■ ■ ■ ■ ■
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11 At the time it entered into the
12 1999 Walgreens agreement, what was
13 Sav-Rx's understanding as to what types of
14 promotions or discounts would constitute a
15 "special promotion or discount available
16 to the public on such date of dispensing"?

17 A. Typically, this would be a
18 senior citizen discount where a pharmacy
19 would determine that the patient was a
20 senior citizen, and any senior citizen
21 that walked in could have that discount
22 applied, again, at that pharmacy level. I
23 also had experience in opening new stores
24 where perhaps a Wednesday would have a
25 discount or to help to, you know, promote

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2 business, especially on slower days, that
3 a discount would be applied to the general
4 public to anybody who walked in would get
5 a 10 percent or 15 percent discount.
6 Those are some examples of other discounts
7 that I have applied in my history as a
8 retail pharmacist.

9 Q. So that latter discount you're
10 talking about would be a discount offered
11 to everybody on the retail price; correct?

12 A. That's correct.

13 Q. At the time Sav-Rx learned about
14 the PSC, did it have a view as to whether
15 the prices offered under the PSC were a
16 special promotion or discount available to
17 the public on such date of dispensing?

18 A. Sav-Rx did not view the PSC to
19 be a special price or discount available
20 to the public upon dispensing.

21 Q. And just to be clear, the
22 language is special promotion or discount
23 available to the public on such date of
24 dispensing.

25 Is your answer the same for

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2 that?

3 A. My answer is the same.

4 Q. And what was Sav-Rx's basis for
5 that view?

6 A. The basis of the view was the
7 experience, myself, of also Jim Barta, in
8 our capacity as retail pharmacists in
9 varying pharmacies and as well as our work
10 with other PBMs and as our work at Sav-Rx.

11 Q. Did Sav-Rx have an understanding
12 as to whether the PSC prices were
13 available to the public?

14 A. The public could purchase
15 different prescription savings clubs but
16 would have to enroll and pay a fee and
17 present a prescription card for it to be
18 adjudicated.

19 Q. At the time that it learned
20 about the PSC, did Sav-Rx have a view as
21 to whether the PSC was available to anyone
22 who walked in off the street?

23 A. I believe anyone off the street
24 could purchase that club. Yes.

25 Q. Were the prices given to anyone

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2 program.

3 Q. Has Sav-Rx ever had pharmacy
4 manuals?

5 A. No.

6 Q. Do you know what a pharmacy
7 manual is?

8 A. Yes, I do.

9 Q. What is a pharmacy manual?

10 A. A pharmacy manual is a
11 production by -- I suppose there could --
12 I'm sure there could be a lot of different
13 pharmacy manuals. What I'm answering for
14 is in relationship to PBMs and claims
15 adjudication, a pharmacy manual is a
16 written documentation of rules set by a
17 prescription benefit manager.

18 Q. And who creates pharmacy
19 manuals?

20 A. Again, in context of the PBM
21 business or PBM world, the prescription
22 benefit manager or PBM creates those
23 manuals.

24 Q. Let's look at the next exhibit,
25 Tab F. We'll mark that as Exhibit 372.

[REDACTED]

12 Do you see that?

13 A. Yes.

14 Q. At the time it entered into the
15 2010 Walgreens agreement, what was
16 Sav-Rx's understanding of what the term
17 "cash-paying customer" meant?

18 A. Cash-paying customer was a
19 person who paid cash for their
20 prescription and what that price was for
21 as set by the pharmacy and not adjudicated
22 to a prescription benefit manager.

23 Q. So that -- the retail price;
24 correct?

25 A. Yes. That is the retail price.

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2 Q. Has Sav-Rx's understanding of
3 what the term "cash-paying customer" means
4 changed between the time that it executed
5 the 2010 Walgreens agreement and today?

6 A. No.

7 Q. And what is the basis for
8 Sav-Rx's understanding as to the meaning
9 of the term "cash-paying customer"?

10 A. In my experience as a retail
11 pharmacist in various pharmacies and types
12 of pharmacy as well as my experience in
13 prescription benefit management, the
14 retail cash-paying customer is consistent
15 with this definition.

16 Q. And is it only your
17 understanding or also the understanding of
18 other people at Sav-Rx?

19 MR. ALEXANDER: Objection to
20 form.

21 A. It is the understanding of
22 Sav-Rx, of the definition.

23 Q. At the time it entered into the
24 2010 Walgreens agreement, did Sav-Rx
25 believe that the term "cash-paying

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2 customer" was well understood by

3 pharmacies?

4 MR. ALEXANDER: Objection to

5 form.

6 A. Yes.

7 Q. And what is the basis for that

8 belief?

9 A. My work in retail pharmacy,
10 working with other prescription benefit
11 managers as well as in prescription
12 benefit managers in -- management business
13 and in working with the pharmacies that
14 adjudicated claims to Sav-Rx.

15 Q. At the time it entered into the
16 2010 Walgreens agreement, did Sav-Rx
17 believe that the term "cash-paying
18 customer" was well understood by other
19 PBMs?

20 MR. ALEXANDER: Objection to
21 form.

22 MS. LENCIONI: Foundation.

23 A. Yes. It is my belief that other
24 retail pharmacies and other PBMs had a
25 consistent view of usual and customary

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2 pricing.

3 Q. And what is the basis for that
4 belief?

5 A. The experience of in
6 prescription benefit management, in
7 working with network pharmacies as well as
8 experience in retail pharmacy working with
9 other PBMs.

10 Q. When it entered into the 2010
11 Walgreens agreement, did Sav-Rx have a
12 view as to whether the PSC price was the
13 price charged to a cash-paying customer?

14 A. Yes.

15 Q. And what was that view?

16 A. The view was that the PSC
17 pricing was not a cash price or
18 cash-paying customer.

19 Q. I think you broke up a little
20 bit, but I think you said -- and correct
21 me if I'm wrong -- that the view was that
22 the PSC pricing was not a cash price or a
23 cash-paying customer.

24 A. That's correct.

25 Q. Okay. Let me just ask the

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2 question again so we use the exact
3 language.

4 When it entered into the 2010
5 Walgreens agreement, Sav-Rx did have a
6 view as to whether the PSC was the price
7 charged to a cash-paying customer and that
8 it was not the price charged to a
9 cash-paying customer; correct?

10 MR. ALEXANDER: Objection to
11 form.

12 A. With the 2010 contract, it was
13 the Sav-Rx understanding that the PSC
14 pricing was not the cash price for a
15 cash-paying customer and, therefore, was
16 not the usual and customary pricing.

17 Q. And, Ms. Piti, I just want to
18 make sure we're using the exact language
19 of the contractual term. That's why I
20 came back to it.

21 So let me just start over with
22 this series of questions.

23 When it entered into the 2010
24 Walgreens agreement, did Sav-Rx have a
25 view as to whether the PSC price was the

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2 "price charged to a cash-paying customer"?

3 A. Yes, we had a view.

4 Q. And that view was?

5 A. No, that the PSC pricing was not
6 the price charged by the dispensing retail
7 pharmacy location to a cash-paying
8 customer.

9 Q. And what was the basis for that
10 view?

11 A. My experience in retail
12 pharmacy, in working with other PBMs, and
13 my experience in PBM working with other
14 retail pharmacies.

15 Q. Has Sav-Rx's view as to whether
16 the PSC price is the price charged to a
17 cash-paying customer changed between the
18 time it entered into the 2010 Walgreens
19 agreement and today?

20 A. No. But I need to clarify that
21 in -- you know, cash customer, cash price,
22 retail price, cash-paying customer --
23 these terms are interchangeable and not
24 different. The differing definitions in
25 the '99 and 2010 are verbiage only and are

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2 not -- they're not substantially different
3 in their meaning. So if -- you know, you
4 kind of forced me into, you know, saying
5 those exact words, but for Sav-Rx's
6 belief, cash price, retail price,
7 cash-paying customer, member of the
8 public -- these are interchangeable terms.

9 Q. Thank you for that.

10 And so the basis for your view
11 as to the meaning of those terms is the
12 same; correct?

13 A. Yes. That is the basis of my
14 view.

15 Q. And I apologize for asking you
16 what appears to be repetitive questions.
17 I understand why you said what you said.

18 I do have to ask a few more that
19 will appear repetitive, and I apologize
20 for that.

21 A. Okay. Let's go.

22 Q. When it entered into the 2010
23 Walgreens agreement, did Sav-Rx have a
24 view as to whether the price Walmart
25 charged under its \$4 generic program was

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2 form.

3 A. I do not know specifically. I
4 know that we almost always overperformed.
5 However, if -- in the rare case that we
6 didn't, we would have paid money to that
7 sponsor.

8 Q. When you over-perform, no money
9 was owed to the sponsor; correct?

10 A. I would have to over-perform in
11 all categories.

12 Q. Right. Because each category
13 was looked at individually.

14 A. That's correct.

15 Q. So sitting here today, you don't
16 know whether Sav-Rx underperformed for any
17 category as to IBEW Local 38; correct?

18 A. I do not know.

19 Q. Okay. If we can look at Tab O
20 and mark Tab O as Exhibit 379.

21 (Exhibit 379, An email chain
22 dated March 2, 2010, Bates
23 IBEW_0001152, was hereby marked for
24 identification, as of this date.)

25 MR. PERKINS: The document is

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2 now available.

3 A. I see it.

4 Q. Do you recognize Exhibit 379?

5 A. I do.

6 Q. This is an email exchange
7 between you and -- at the bottom, it's an
8 email exchange between you and Walter
9 O'Malley of IBEW Local 38; is that
10 correct?

11 A. That is correct.

12 Q. In the second from the bottom,
13 on February 23, 2010, at 9:32 p.m., you
14 say, "It was information on how to get a
15 Sav-Rx Advantage discount card for union
16 members who have lost their Local 38
17 insurance."

18 Do you see that?

19 A. Yes.

20 Q. Can you explain what the Sav-Rx
21 Advantage discount card is?

22 A. The Sav-Rx Advantage discount
23 card is a prescription card whereas the
24 pharmacy adjudicates the claim to Sav-Rx,
25 and Sav-Rx applies negotiated discounts

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2 for that pharmacy, and the patient pays
3 100 percent of the cost to them back.

4 Q. So IBEW Local 38 would not pay
5 anything for that drug; correct?

6 A. Correct.

7 Q. Do you know -- this is -- this
8 email exchange is in February of 2010.

9 Do you know if IBEW Local 38
10 offered this benefit to its members who
11 had lost their insurance prior to February
12 of 2010?

13 A. I do not know.

14 Q. If we look at Tab P, which is
15 previously marked as Exhibit 74.

16 (Exhibit 74, Sav-Rx Advantage
17 Card summary, Bates IBEW_0000652, was
18 previously marked for identification.)

19 MR. PERKINS: The document is
20 now available.

21 Q. This is a document we -- and
22 it's at the top, you can see. We received
23 this document from IBEW.

24 Do you recognize this document?

25 A. Yes, I do.

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2 Q. And what is this document?

3 MR. ALEXANDER: Counsel, can you
4 hold on just one second? It's still
5 loading on my side.

6 A. Oh, and I pulled up the wrong
7 one. Hold on.

8 Q. It should say "Sav-Rx Advantage
9 Card" at the top. And we're talking about
10 Tab P.

11 MR. ALEXANDER: Okay. I see it.
12 Thank you.

13 A. It's pulling up O for some
14 reason.

15 Q. Yeah. We're skipping O.

16 A. Okay. I see it.

17 Q. No. O we already talked about
18 it.

19 A. Okay. I got it. I'm there.

20 Q. Do you recognize this document?

21 A. I do.

22 Q. And what is this document?

23 A. Although I don't remember
24 specifically, I believe it to be a summary
25 of the Advantage program provided to

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2 Walter O'Malley to utilize in his

3 newsletter.

4 Q. His newsletter to his members?

5 A. Yes.

6 Q. And do you know who created this
7 document?

8 A. I believe Sav-Rx created the
9 document. But --

10 Q. But -- is there anything you
11 want to add to that?

12 A. Sav-Rx didn't distribute this.
13 If Sav-Rx would have distributed it, it
14 would have been on our letterhead. So it
15 was not something that was mailed from
16 Sav-Rx or sent from Sav-Rx to any
17 individuals.

18 Q. But Sav-Rx did create this
19 document; correct?

20 A. I believe so, just putting
21 together, based on the email that you
22 showed between myself and Walter O'Malley.

23 Q. Let's look at the next exhibit,
24 Exhibit Q, and we'll mark it as
25 Exhibit 380.

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2 (Exhibit 380, Sav-Rx Advantage
3 Discount Card Program summary, was
4 hereby marked for identification, as
5 of this date.)

6 MR. PERKINS: The document is
7 available.

8 Q. Do you recognize this document?

9 A. Still loading. Yes. I can see
10 it, and I recognize it.

11 Q. What is this?

12 A. This is a section on our website
13 for administrators where they have gone
14 into a tab that explains the Sav-Rx
15 Advantage program and provides a link to
16 an enrollment form and brochure.

17 Q. And in fact, if we can put on
18 the Zoom Exhibit 74 and this document.

19 MR. LEIB: Mike, are you able to
20 publish those next to each other?

21 MR. PERKINS: Mr. Videographer,
22 could you enable screen-sharing,
23 please?

24 THE VIDEOGRAPHER: Does it work
25 for you now?

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2 MR. LEIB: Forget it.

3 A. Oh, we just got it.

4 MR. LEIB: Yeah. Let's skip it
5 anyway, Mike. Take it down.

6 Q. We pulled this Exhibit 380 off
7 the Sav-Rx website on September 27, 2020.

8 Do you see that this says in the
9 middle, "This card is offered as a
10 courtesy to our clients and is no cost to
11 you, your union or benefit fund."

12 Do you see that?

13 A. Is this Tab Q?

14 Q. Yes.

15 A. Okay.

16 Q. We'll just start from the
17 beginning. "This Sav-Rx Advantage Program
18 is a cash discount card that may save you
19 money on your prescriptions if you're not
20 eligible for coverage under your fund's
21 prescription plan or if you have
22 prescriptions that are not covered under
23 your prescription benefit. The Advantage
24 card is offered as a courtesy to our
25 clients and at no cost to you, your union

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2 or benefit fund. Although you will pay
3 100 percent of the cost of your
4 medication, with the Sav-Rx Advantage
5 card, you will pay at the Sav-Rx discount
6 rate, not the pharmacy's retail price."

7 Do you see that?

8 A. Yes, I see that.

9 Q. And the pharmacy's retail price,
10 are you referring to the same meaning of
11 retail price as you discussed earlier?

12 A. Retail price -- I read this to
13 mean retail price, cash price, our usual
14 and customary price.

15 Q. And on the next sentence, you
16 say -- or Sav-Rx says, "On average,
17 participants who use this card save up to
18 32 percent over pharmacies' usual and
19 customary pricing."

20 Do you see that?

21 A. I see that.

22 Q. Is that saying that it's
23 32 percent off of the pharmacy's retail
24 price?

25 A. No.

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2 Q. What is it saying?

3 A. It says that it is Sav-Rx's
4 discounted rate as negotiated with the
5 pharmacies, and comparatively, on an
6 aggregate or average, the Sav-Rx
7 discounted rate is 32 percent less than
8 usual and customary pricing or retail cash
9 price.

10 Q. And if we can look at -- let me
11 ask you this.

12 Did Sav-Rx consider the Sav-Rx
13 Advantage discount card program prices to
14 be usual and customary prices?

15 A. No.

16 Q. Okay. And why is that?

17 A. The pharmacy adjudicates the
18 claim to Sav-Rx, including their usual and
19 customary cash or retail price. And
20 Sav-Rx determines what that price is based
21 on the negotiated contract.

22 Q. And, in fact, this specifically
23 would you agree says -- strike that.

24 And would you agree that this
25 specifically says that Sav-Rx does not

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2 consider the Sav-Rx Advantage discount
3 card program to be the pharmacy's usual
4 and customary price?

5 MS. LENCIONI: Objection to
6 form.

7 MR. ALEXANDER: Objection to
8 form.

9 A. I don't agree that it
10 specifically says that. However, I do
11 believe that most people reading this
12 explanation would agree that the
13 discounted rate is what they will
14 specifically pay and that that discounted
15 rate is not the pharmacy's retail price
16 and that the discounted rate is in
17 actuality on average 32 percent less than
18 that retail or usual and customary price.

19 Q. And by saying that it's on
20 average 32 percent less than the usual and
21 customary price, isn't it saying that the
22 discount price is not the usual and
23 customary price?

24 MR. ALEXANDER: Objection to
25 form.

1 PITI - HIGHLY CONFIDENTIAL - AEO

2 MS. LENCIONI: Objection to
3 form.

4 A. I believe that is what it means,
5 and I believe that this wording, most
6 people would come to that conclusion.

7 Q. And if we look back at
8 Exhibit 74 --

9 MS. LENCIONI: Counsel, could
10 you remind us what that is?

11 MR. LEIB: I'm sorry. What?

12 MS. LENCIONI: Can you remind us
13 what Exhibit 74 is?

14 MR. LEIB: Yeah. P.

15 Q. Would you agree that that same
16 language, "up to 32 percent over the
17 pharmacy's usual and customary pricing,"
18 is contained in that document as well?

19 A. Yes. I agree that that same
20 language is contained in this document.

21 Q. And then Exhibit R -- I'm
22 sorry -- Tab R we'll mark as Exhibit 381.

23

24

25

4 Q. So a cash-only participant, is
5 that somebody who, pursuant to the
6 sponsor, is provided with the Sav-Rx
7 Advantage discount card?

8 MR. ALEXANDER: Objection to
9 form.

10 A. In -- for this agreement, this
11 is -- the cash-only participant is the --
12 is the participants who is given the
13 Sav-Rx Advantage discount card.

14 Q. The Sav-Rx Advantage discount
15 card, aside from this contract, is it
16 limited to your clients? Is it only
17 offered to your clients?

18	MS. LENCIONI: Object to form.
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19 A. Yes.

20 Q. Can people with insurance get
21 the Sav-Rx Advantage discount card?

22 MR. ALEXANDER: Objection to
23 form.

24 A. Yes.

25 Q. And what situation would that

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2 be?

3 A. If -- in the case of a
4 medication or a therapeutic class of
5 medications not covered under their
6 eligible benefit, under their funded
7 commercial fund plan, they may want to use
8 the Advantage card to achieve the Sav-Rx
9 discounted rates for those medications.

10 Q. So is it that some of your
11 clients provide the discount card to its
12 funded beneficiaries?

13 A. Yes.

14 Q. Okay. And those clients who do
15 that pay a fee for that; right?

16 A. We do have clients that do pay a
17 fee. There is not a fee under this
18 electrical workers agreement.

19 Q. Right. I'm talking about under
20 this -- under the electrical workers
21 agreement, this -- as I'm understanding
22 it, the card is not provided to people who
23 have insurance. It's only provided to
24 people who don't have insurance under the
25 plan; correct?

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2 A. No. It could be available for
3 those who have insurance to utilize for
4 drugs that aren't covered under that
5 insurance.

6 Q. Just let's quickly look at
7 Exhibit 74, which is Tab P.

8 A. I have it.

9 Q. The reason I had thought that it
10 was only available to those IBEW
11 beneficiaries who did not have insurance
12 is because this specifically says the
13 program is being created to assist our
14 members who have run out of pharmacy
15 benefits.

16 Does that refresh your
17 recollection or change your answer in any
18 way?

19 A. This promotion was for people
20 who had lost benefits. There was a lot of
21 people who were losing their benefits, and
22 so this -- this particular newsletter
23 promotion was targeted at that. So it --
24 but it certainly could be utilized for
25 people who have benefits.

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2 Q. And do you know if IBEW Local 38
3 did provide Sav-Rx Advantage discount
4 cards to beneficiaries who had coverage?

5 MR. ALEXANDER: Objection to
6 form.

7 A. I don't know specifically.

8 Q. At any time between 2007 and
9 2014, did IBEW Local 38 ask Sav-Rx to
10 ensure that IBEW Local 38's insured
11 beneficiaries paid no more than the Sav-Rx
12 Advantage discount card program prices?

13 MR. ALEXANDER: Objection to
14 form and out of scope.

15 A. I don't remember that specific
16 question. I don't think that it -- I
17 don't think it would apply, because these
18 are the prices. Those are our discounts.

19 Q. All right. And all I'm asking
20 is whether, at any time IBEW -- during
21 2007 to 2014, IBEW Local 38 came to Sav-Rx
22 and asked that they ensure that IBEW
23 Local 38's insured beneficiaries pay no
24 more than the Sav-Rx Advantage discount
25 card program prices.

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2 MR. ALEXANDER: Objection to
3 form and out of scope.

4 MS. LENCIONI: Scope.

5 A. Not to my recollection.

6 Q. And at any time between 2007 and
7 2014, did IBEW Local 38 come to Sav-Rx and
8 ask that they ensure that IBEW Local 38
9 not pay more than the Sav-Rx Advantage
10 discount card program prices?

11 MR. ALEXANDER: Objection to
12 form. Out of scope.

13 MS. LENCIONI: Objection.
14 Scope.

15 A. Not to my recollection.

16 Q. Would IBEW or -- strike that.
17 During the time period that
18 Sav-Rx was IBEW Local 38's PBM, did Sav-Rx
19 provide IBEW with a report of claims
20 submitted by IBEW Local 38 beneficiaries
21 using the Sav-Rx Advantage discount card?

22 MR. ALEXANDER: Objection to
23 form. Out of scope.

24 MS. LENCIONI: Objection.
25 Scope.

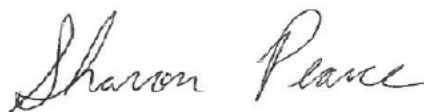
CERTIFICATION

I, SHARON PEARCE, RMR, CRR, CRC,
NYRCR, a Notary Public for and within the
State of New York, do hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 9th day of October, 2020.



SHARON PEARCE

RMR, CRR, CRC, NYRCR

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